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71 C 75. 2814

OGC 75-3994
29 October 1975

MEMORANDUM FOR THE RECORD

SUBJECT: Social Security Act Amendments--Garnishment of Federal Wages and Annuities for Child Support and Alimony

REFERENCES: A. M/R by AEG, Subj: Social Services Amendments of 1974-- Attachment of Federal Remuneration for Certain Purposes, dtd 22 April 1975

B. Memo to [] OLC, fm AEG, Subj: Proposed Executive Order No. 11030--Delegation of Authority, etc., dtd 11 June 1975 STAT

C. N/R by AEG, Subj: Social Security Act Amendments-- Garnishment of Federal Wages and Annuities for Child Support and Alimony, dtd 28 July 1975

D. Memo to [] OLC, fm AEG, Same Subject as Reference C, dtd 29 Sept 1975 STAT

1. Referent memoranda presumed that the Office of Management and Budget (OMB) would issue the regulations necessary to implement Section 459 of the Social Security Act, which permits the garnishment under certain conditions of Federal wages and annuities to meet child support and alimony obligations. On 3 October 1975, Executive Order 11881 was promulgated. It directs the Civil Service Commission (CSC), in consultation with the Department of Justice, to issue regulations for the uniform implementation by all executive agencies of Section 459. According to the order, the regulations shall establish standards for determining what constitutes remuneration for employment, shall provide procedures to facilitate appropriate service of process upon an executive agency and shall establish such other standards and procedures as are necessary or appropriate for the uniform implementation of the order and Section 459. Each executive agency is required to issue regulations pursuant to and in accord with those issued by the Commission.

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2. Referent memoranda have in no uncertain terms stated that Section 459 and the OMB draft regulations reviewed by this Office do not give the Agency the flexibility needed to protect covert employees from exposure in court proceedings. Moreover, as noted in these memoranda, discussions with OMB concerning the draft regulations were not successful in convincing them of our special problems. On 23 October 1975, I visited the CSC and spoke to Mr. David Shapiro of the Office of General Counsel, who is responsible for drafting the regulations implementing E.O. 11881. In the course of our discussion, I asked Mr. Shapiro if the Agency would have the opportunity to review the regulations prior to their promulgation. He said that this would not be possible and that the regulations will be issued after CSC consults the Department of Justice. I stated that I was aware of the need for speed in issuing the regulations, but I hoped that we would have the opportunity to comment on them. He replied in the negative. Finally, I asked him if he could give some consideration to the Agency's problems when he drafts the regulations. I explained to him that, to the best of my knowledge, the Agency is the only executive agency which has employees who are not publicly (or for that matter privately) identified as employees of the Agency and who, in many cases, are not even identified as Government employees. I noted that our experiences with domestic relations cases suggest that what we refer to as "cover" is often "thrown to the wind" when the dollars and cents economics of child support and alimony are in dispute. I asked him if in the appendix to the regulations he could include a statement to the effect that any party who wishes to garnish or attach the salary of an individual believed to be an Agency employee should contact the Agency before instituting legal proceedings in order to obtain "more specific guidance." He said he would "go one better than this" and put in the body of the regulation a provision that any party must contact the CIA (presumably the Office of General Counsel) before instituting any legal proceeding for garnishment or attachment. If Mr. Shapiro "delivers," the Agency will have the opportunity to determine whether a prospective garnishee is, in fact, an employee, and if so, the opportunity to ask the employee to establish an allotment to preclude him or her from once again falling behind in payments. If this is done, the case will be kept out of court and a covert employee will not be publicly identified with the CIA. At the same time, the Agency will be able to enhance its overall security, since the details of the financial and personal lives of overt employees likewise will not be aired in a public forum.

3. There is one problem which is not yet resolved but which is on its way to resolution--the question of allotments. Under the present CSC regulations, allotments to meet child support and alimony payments are not permitted. Mr. Shapiro stated that the CSC regulations on this subject are being amended.

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4. As a final point, garnishment or attachment may only be accomplished through legal process. While the Agency cannot require an employee to make an allotment to meet child support or alimony obligations, the Agency retains control over an employee's assignments or duties and does not have to retain an employee either in a cover position or in a position involving access to sensitive information if it is not to the advantage of the Agency to do so.

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Assistant General Counsel

cc: D/Pers
D/Sec
C/CCS
OLC ✓